

Remarks

Claims 2-24, 26, 28, 30-36, 41-43, 45 and 47-49 have been canceled without prejudice, and new claims 50-155 have been added to more particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Support for the newly added claims is found throughout the specification as filed.

Particularly, support for claims 50-52 can be found, for example, at page 7, lines 10-18 and 21-24. Claims 53-54, 66-67, 83-84, 105-106, 120-121, 130-131, 139-140 and 148-149 find support, for example, at page 66, lines 12-25. Claims 55-57, 68-71, 85-88, 107-110, 122-125, 132-135, 141-144 and 150-155 find support, for example, at page 66, lines 28-29 and page 67, lines 1-2. Support for claims 59-60, 72-73, 89-90, 111-112, 126-127, 136-137, 145-146 and 154-155 find support, for example, at page 67, lines 27-32. Claims 61(a) and 62-63 find support for example, at page 21, line 35 through page 22 line 7. Claims 61(b) and 64-65 find support, for example, at page 16, line 36 through page 17, line 17. Support for claim 74(a), 75, 78 and 79 can be found, for example, at page 21, lines 21-25, page 25, line 23 and line 26; support for claim 74(b), 76, 80 and 81 can be found, for example, at page 22, line 34-37, and page 27, lines 30 and 32; and support for claim 74(c), 77 and 82 can be found, for example, at page 23, lines 25-28. Support for claims 86(a)-(d) and 92-95 can be found, for example, at page 12, lines 19-36; support for claims 86(e)-(k) and 96-102 find support, for example, at page 58, lines 7-12; while support for claims 86(l) and 103 can be found, for example, at page 54, lines 4-7 and page 74, lines 23-24. Support for claim 104 can be found for example at page 12, lines 19-36 and page 58, lines 7-12. Support for claims 113-119, and 128-129 find support, for example, at page 37, lines 5-15. Finally, support for claims 138 and 147 find support, for example, at page 7, line 31 through page 8, line 2.

Thus, no new matter has been added by way of the amendment.

The Restriction Requirement

The Examiner contends that the inventions are distinct, each from the other, and thus, has required an election under 35 U.S.C. § 121.

In order to be fully responsive, Applicants hereby provisionally elect the invention of Group II, claims 3, 6, 9, 12, 18, 21, 24, 32, 35 and 43, drawn to nucleic acids encoding IL-22,

vectors, host cells and recombinant expression, with traversal. Applicants point out that the claims 3, 6, 9, 12, 18, 21, 24, 32, 35 and 43 have been cancelled and that new claims 50 to 155 are directed to subject matter falling within the scope of Group II as defined by the Examiner.

With respect to the Examiner's division of the invention into eleven (11) groups and the reasons stated therefor, Applicants respectfully traverse. Applicants submit that even where two patentably distinct inventions appear in a single application, restriction remains improper unless it can be shown that the search and examination of both groups would entail a "serious burden" (*See* M.P.E.P. § 803). In the present situation, no such showing has been made.

Even assuming, *arguendo*, that Groups I to XI represent distinct or independent inventions, Applicants submit that to search and examine the subject matter of all the Groups together would not be a serious burden on the Examiner, particularly, for example, Groups II, IV and XI. For example, a search of the polynucleotide claims would clearly provide useful information for the polypeptide claims. In many if not most publications, where a published nucleotide sequence contains an open reading frame, the authors also include, as a matter of routine, the deduced amino acid sequence and often related compounds such as agonists and antagonists, including but not limited to, antibodies. Thus, the search for polynucleotides commonly overlaps with those of related compounds and polypeptides. Thus, the search and examination of a polynucleotide, corresponding deduced polypeptide sequence, and other related compounds would not entail a serious burden.

Thus, in view of M.P.E.P. § 803, the claims of all of Groups I to XI should be searched and examined in the subject application.

Accordingly, Applicants respectfully request that the restriction requirement under 35 U.S.C § 121 be reconsidered and withdrawn and the instant claims be examined in one application.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

CONCLUSION

In view of the foregoing remarks, Applicants believe they have fully addressed the Examiner's concerns and that this application is now in condition for allowance. An early

notice to that effect is urged. A request is made to the Examiner to call the undersigned at the phone number provided below if any further action by Applicants would expedite allowance of this application.

If there are any fees due in connection with the filing of this paper, please charge the fees to our deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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Enclosures
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